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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,150	05/16/2005	Hubert Rudolf Griengl	4301-1136	1804

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EXAMINER

MCDUFFIE, MICHAEL D

ART UNIT

PAPER NUMBER

3632

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/06/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.		Applicant(s)	
	10/535,150		GRIENGL, HUBERT RUDOLF	
	Examiner		Art Unit	
	Michael McDuffie		3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 22-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-21 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>05/16/05</u> . | 6) <input type="checkbox"/> Other: _____ |

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The following correspondence is a non-final Office Action for application # 10/535,150, entitled: Prop for Objects such as sunshades, filed on 05/16/2005. Claims 1-25 are pending.

DETAILED ACTION

Election/Restrictions

Claims 22-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/17/2007.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12, 15 and 20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 12, 15 and 20, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). For examination purposes, the terms "captively connected," will be understood to mean that the elements are attached.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 6-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Padin (U.S. Pat. 4850564).

Regarding claim 1, Padin discloses a post for articles such as parasols, road signs, advertising signs, a rotary clothes drier, with a top part **20** holding a shaft of the article and a bottom part **42** facing the ground, characterized by a central connecting element **62** which is located in the area of the bottom part **42** and which can be positively joined a mount **60** which is anchored securely in the ground.

With regards to claim 2, Padin further teaches the post where, the central connecting element **62** is a screw and the mount **60** is an anchor.

Regarding claim 3, Padin goes on to teach the post, where the central connecting element **62** and the mount **60** form a screw thread-quick release coupling.

With regards to claim 6, Padin further discloses the post, where the top part **20** is a pipe and the bottom part **42** is a plate which is connected to the pipe **20** in the manner of a flange.

Regarding 7, Padin discloses the post, where the pipe **20** is open on its end facing the mount **60** and wherein the connecting element **62** on this end is attached to the pipe **20**.

With regards to claim 8, Padin goes on to teach the post, where a holding part **21** for the connecting element **62** is mounted in the pipe **20**.

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Regarding claim 9, Padin teaches the post, where the holding part **21** consists of a receiving part through which the connecting element **62** extends, and a fixing part (see threads) with which the connecting element **62** is held in the receiving part.

With regards to claim 10, Padin discloses the post, where the receiving part and the fixing part are screwed to one another (see Fig. 1).

Regarding claim 11, Padin further teaches the post, where the fixing part has a centering opening (as shown in Fig. 2).

With regards to claim 12, Padin teaches the post, where bottom part is captively connected, to the top part **21**.

Regarding claim 13, Padin goes on to teach the post, where the bottom part **42** is formed by an essentially all-over ground plate which is permanently joined to the top part **20**.

With regards to claim 14, Padin teaches the post, where the connecting element **62** is inserted through a hole **44** in the ground plate **42**.

Regarding claim 15, Padin further discloses the post, where the connecting element **62** is captively connected to the post.

With regards to claim 16, Padin discloses the post, where the connecting element **62** is a screw which is screwed into the ground plate and is optionally fixed there.

Regarding claim 17, Padin goes on to disclose the post, where the top part **20** in the area of its top end has a clamp device **23** for the shaft of the article.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable in view of (Irwin et al. U.S. Pat. 6393795).

Padin is discussed above, and fails to teach a mount that consists of high-quality steel or aluminum. However, it is well known in the art to utilize metallic materials in the construction of anchors, for their strengthening properties.

Claims 18-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Padin in view of Vargo (U.S. Pat. 5369925).

Regarding claims 18-21, Padin is discussed above, and fails to teach an elastic layer. With regards to claim 18, Vargo teaches a post, where there is an elastic layer **70** the ground plate **45-48** on the side facing the ground.

Regarding claim 19, Vargo further teaches where the elastic layer **70** is a plate of rubber or the like.

With regards to claim 20, Vargo goes on to teach where the layer **70** is permanently joined to the bottom part (as shown in Fig. 3).

Regarding claim 21, Vargo teaches where the layer **70** closely surrounds a central connecting element **18**.

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention, to incorporate the elastic layer of Vargo with Padin's base member, in order to allow greater flexibility in elastic movement of the post protector when it is impacted by an object, as taught to be desirable by Vargo (see col. 4, lines 16-19).

Allowable Subject Matter

Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

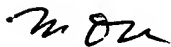
In addition to the aforementioned references, the Applicant is urged to review form PTO-892, as it discloses mounting devices capable of supporting posts.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael McDuffie whose telephone number is 571-272-3832. The examiner can normally be reached on Mon.-Fri., 7AM-3:30PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571-272-6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael McDuffie
1-Feb-07



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PRIMARY EXAMINER